

COMMONWEALTH OF MASSACHUSETTS

TOWN OF HANOVER BOARD OF HEALTH

REGULATIONS GOVERNING THE DISTRIBUTION OF TOBACCO PRODUCTS AND NON-TOBACCO NICOTINE DELIVERY PRODUCTS

Section I - Purpose and Authority

A. These regulations are intended to protect the public health and general welfare by ensuring that access to and distribution of all tobacco products are in accordance with existing federal and state laws, including, but not limited to M.G.L Chapter 270 sections 6 and 7, governing the use, sale and distribution of tobacco products which have been declared injurious to public health by the Surgeon General of the United States. Whereas there exists conclusive evidence that nicotine is as addictive as cocaine or heroin; the appeal created by Nicotine Delivery Products or e-cigarettes, which contain addictive nicotine, can lead minors into a nicotine addiction that may result in their daily use of the these products and tobacco products; the U.S. Food and Drug Administration has conducted laboratory tests finding e-cigarettes contain toxic chemicals and carcinogens; and the Town of Hanover wants to protect its youth against the use of tobacco nicotine products, including e-cigarettes; now therefore it is the intention of the Hanover Board of Health to curtail the access and use of tobacco and nicotine delivery products.

B. These regulations are adopted by the Hanover Board of Health under the authority of Massachusetts General Laws, Chapter 111, section 31.

Section II – Definitions

The definitions in this section apply to words and phrases used in these regulations:

Board of Health: The Hanover Board of Health.

Business: Any sole proprietorship, partnership, joint venture, corporation, trust or other business entity, including retail establishments where goods and services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional and commercial services are delivered.

Business Agent: An individual who has been designated by the owner or operator of any establishment to the manager or otherwise in charge of said establishment.

E-cigarette: Any electronic nicotine delivery product composed of a mouthpiece, heating element, battery and/or electronic circuits that provides a vapor of liquid nicotine to the user, or relies on vaporization of any liquid or solid nicotine. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes or under any other product name.

Employee: Any individual who performs services for an employer.

Employer: Any individual, partnership, association, corporation, trust or other organization, including any public or private authority or municipal or other governmental agency, which regularly uses the services of one (1) or more persons.

Individual: An employee, volunteer or any other person who patronizes an area where tobacco products are sold.

Minor: Any individual who is under the age of eighteen (18)

Nicotine Delivery Product: Any article or product made wholly or in part of a tobacco substitute or otherwise containing nicotine that is expected or intended for human consumption, but not including a tobacco substitute prescribed by a licensed physician or a product that has been approved by the United States Food and Drug Administration for sale as a tobacco use cessation or harm reduction product or for other medical purposes and which is being marketed and sold solely for that approved purpose.

Permittee: Any sole proprietorship, partnership, joint venture, corporation or other place of business including retail establishments and bars that has been issued a permit by the Town of Hanover Health Department regulating the location and sale of tobacco products and nicotine delivery products in the Town of Hanover.

Section II (continued)

Photographic Identification: A government issued document containing a person's photographic likeness and date of birth such as found in, but not limited to, a valid Massachusetts driver's license, Massachusetts identification card issued by the Registry of Motor Vehicles, or valid United States passport.

Retailer: For the purpose of these regulations, any retail store utilized for the sale of tobacco products, nicotine delivery products and accessories.

Self-service Display: Any display from which persons can select a tobacco or nicotine delivery product without assistance from an employee or store personnel.

Smoking: Inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, weed or plant product in any manner or any form.

Tobacco Products: Products containing tobacco in any of its forms including but not limited to cigarettes, cigars, smokeless tobacco, pipe tobacco, or snuff.

Vending Machine: Any automated or mechanical self-service device which dispenses cigarettes or any other tobacco product, whether or not payment is required.

Section III - Tobacco Sales to Minors Prohibited

A. No person shall sell tobacco products or nicotine delivery products or permit tobacco products or nicotine delivery products to be sold to a minor, or not being the minor's parent or legal guardian, give tobacco products to a minor. In addition, retailers must request to see a customer's photo identification bearing the customer's date of birth before selling cigarettes or other tobacco products to anyone under the age of twenty-seven (27).

B. Tobacco and Nicotine Delivery Product Sales Permit

1.a: Upon receipt from a retailer of a completed application and a fee deemed appropriate by the Board, the Hanover Board of Health will issue a "Tobacco and Nicotine Delivery Product Sales Permit" that will specify the name, address and approved location for retailers who sell tobacco products.

1.b: Before a permit is issued, each applicant must provide proof of a current Massachusetts Department of Revenue tobacco sales permit.

1.c: As part of the application process, the applicant will be provided with a copy of these regulations. Each applicant is required to sign a statement declaring that the applicant has read said regulations and that the applicant is responsible for instructing any and all employees who will be responsible for tobacco sales regarding both state laws regarding the sale of tobacco and these regulations.

Section III (continued)

B2. All retailers who sell tobacco products are required to hold and maintain a valid "Tobacco and Nicotine Delivery Product Sales Permit" from the Hanover Board of Health for each location at which tobacco products and nicotine delivery products are sold. Any person or entity selling tobacco products without said permit shall be fined according to Section VI.A, until such permit is issued by the Hanover Board of Health or its designated agent(s).

3. After receiving said permit, the merchant will receive signage from the Board of Health reading "Sale of cigarettes or any tobacco products to persons under age eighteen (18) is illegal, M.G.L chapter 270, Sections 6 & 7." Any merchant not posting said signage will be in non-compliance of this regulation and subject to penalties per Section VI.B.

4. Unless suspended or revoked, the term for the permit shall be for one calendar year, or fraction thereof.

5. A "Tobacco and Nicotine Delivery Product Sales Permit" is non-transferable. A new permit must be issued to a tobacco retailer who changes locations.

6. Applications for renewal of a “Tobacco and Nicotine Delivery Product Sales Permit” shall be filed in accordance with the administrative procedures established by vote of the Hanover Board of Health. The required fee must accompany each application.

C. Vending machines containing tobacco products shall be permitted only in establishments licensed under M.G.L. c.138, §12 to serve alcoholic beverages for consumption on the premises. Any such machine must:

1. be equipped with a lock-out device requiring an employee to unlock the machine for each sale. The release mechanism must not allow continuous operation of the machine and must be in a location accessible only to employees; and
2. be located where all sales are easily observed by an employee; and
3. Display a sign stating that minors are not permitted to purchase tobacco, notifying customers of the lock-out device and identifying the employee to contact to operate the machine.

D. *Out-of-Package Sales*: No person or entity may sell or cause to be sold, or distribute or cause to be distributed, any cigarette package that contains fewer than twenty (20) cigarettes.

E. *Free Distribution/Samples*: No person or business shall distribute or cause to be distributed any free samples of cigarettes or any other tobacco products.

Section III (continued)

F. *Self-Service Displays*: Self-service displays of all tobacco products and nicotine delivery products are prohibited in the Town of Hanover except when such displays are located in facilities where the retailer ensures in writing to the Hanover Board of Health that no person younger than eighteen (18) years of age is present or permitted to enter at any time. Locked counter displays which prohibit self-service are permitted within the Town of Hanover.

G. *Sales by Employees*: No commercial entity selling tobacco products or nicotine delivery products shall allow any employee to sell cigarettes, other tobacco products or nicotine delivery products until such employee reads the Hanover Board of Health’s regulations regarding the sale of same and signs a statement, a copy of which will be placed on file in the office of the employer, that he/she has read the regulations.

Section IV - Enforcement

A. It shall be the responsibility of the permit holder to assure compliance with all sections of these regulations pertaining to the place of business. Failure to do so shall be a violation of the “Tobacco and Nicotine Delivery Product Sales Permit”. In the absence of the permit holder, a person-in-charge shall be designated who shall be responsible for the implementation and compliance with these regulations.

B. Enforcement of these regulations shall be by the Hanover Board of Health and/or its designated agent(s).

C. Any citizen who desires to register a complaint of non-compliance with these rules and regulations or with M.G.L. Chapter 270 sections 6 and 7 may do so in writing to the Hanover Board of Health.

D. The Board of Health shall issue a written “Notice of Non-Compliance” citing any non-compliance, the corrective action to be taken within ten (10) working days of receipt of the Notice of Non-Compliance; and the right to file a written request for a hearing before the Board of Health in accordance with Section V.A.

E. All “Notices of Non-Compliance” shall be sent by certified mail to the holder of the “Tobacco Sales Permit”.

Section V - Hearings

A. The holder of a “Tobacco and Nicotine Delivery Product Sales Permit” receiving a non-compliance notice may request a hearing before the Hanover Board of Health. Said request shall be in writing and filed with the Board of Health within seven (7) calendar days of receipt of the written notice of non-compliance.

B. The Board of Health shall schedule the requested hearing within twenty-one (21) calendar days of receipt of the written request for a hearing.

C. Following the hearing, the Board of Health shall uphold, amend or rescind the penalty noted in the Notice of Non-Compliance. Written notice of the Board of Health’s action shall be given to the holder of the “Tobacco and Nicotine Delivery Product Sales Permit”.

Section VI - Penalties, Fines, Suspension and/or Revocation of Permit

A. Any person or entity selling any tobacco and/or nicotine delivery products without said permit shall be fined fifty dollars (\$50.00) per day until said permit is issued or reinstated by the Hanover Board of Health or its designated agent(s).

B. A holder of a “Tobacco Sales Permit” in violation of any of the provisions of these regulations shall receive:

1. In the case of a first violation of any section of these rules and regulations, suspension of the “Tobacco and Nicotine Delivery Product Sales Permit” for a period of three (3) consecutive days and a fine of one hundred dollars (\$100.00).
2. In the case of a second violation within a twelve-month period, a suspension of the “Tobacco and Nicotine Delivery Product Sales Permit” for a period of twenty-one (21) consecutive days and a fine of two hundred dollars (\$200.00).

3. In the case of a third violation within a twelve-month period, a suspension of the "Tobacco and Nicotine Delivery Product Sales Permit" for a period of ninety (90) days and a fine of three hundred dollars (\$300.00).
4. In the case of a fourth violation within a twenty-four month period, revocation of the "Tobacco and Nicotine Delivery Product Sales Permit" for a minimum of twelve (12) and a maximum of thirty-six (36) months.

During such time that a "Tobacco and Nicotine Delivery Product Sales Permit" has been suspended or revoked for violations of this regulation, all tobacco products must be removed from all sales areas and kept under a lock and key or removed from the premises.

All associated costs shall be charged against the violator if found as such, including but not limited to court costs and fees.

Failure to pay fines will result in revocation of permit for a minimum of twelve (12) and a maximum of thirty-six (36) months.

Section VII - Other Applicable Laws

These regulations shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable health, safety or fire codes, regulations or statutes.

Section VIII – Severability

The invalidity of any section or provision of these regulations shall not invalidate any other section or provision thereof, nor shall it invalidate any permit, fine or suspension which previously has been issued.

Section IX - Effective Date

These regulations shall take effect on January 1, 1998. Amendments adopted on May 28, 2002, shall take effect on July 1, 2002. Amendments adopted on April 13, 2010, and shall take effect on immediately.

Regulations adopted on November 24, 1997

HANOVER BOARD OF HEALTH

Leslie J. Molyneaux, Chairman
Jerome D. Cohen, member
R. Alan Rugman, member